

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 146**

Introduced By: McDonald, 41;  
Read first time: January 8, 2007  
Committee: Judiciary

A BILL

1 FOR AN ACT relating to child support; to amend sections  
2 42-364.01, 43-1718.02, and 43-1723, Reissue Revised Statutes  
3 of Nebraska; to change the administrative fee allowed for  
4 income withholding; and to repeal the original sections.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 42-364.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           42-364.01. In any proceeding when a district court, county  
4 court, or separate juvenile court has ordered, temporarily or  
5 permanently, a parent, referred to as parent-employee in sections  
6 42-364.01 to 42-364.12, to pay any amount for the support of a minor  
7 child, that court shall, following application, hearing, and findings,  
8 as required by sections 42-364.02 to 42-364.12, order the employer of  
9 such parent:

10           (1) To withhold, from the parent-employee's nonexempt,  
11 disposable earnings presently due and to be due in the future, such  
12 amounts as shall reduce and satisfy the parent-employee's previous  
13 arrearage in child support payments arising from the parent-employee's  
14 failure to comply fully with an order previously entered to pay child  
15 support, the parent-employee's obligation to pay child support as  
16 ordered by the court as such obligation accrues in the future;

17           (2) To pay to the parent-employee, on his or her regularly  
18 scheduled payday such earnings then due which are not ordered  
19 withheld;

20           (3) To deduct from the sums so withheld an amount set by the  
21 court, but not to exceed ~~two dollars and fifty cents~~ ten dollars  
22 in any calendar month, as compensation for the employer's reasonable  
23 cost incurred in complying with such order;

24           (4) To remit within seven calendar days after the date the  
25 obligor is paid such sums withheld, less the deduction as allowed by  
26 the court pursuant to subdivision (3) of this section, to the State  
27 Disbursement Unit;

1           (5) To refrain from dismissing, demoting, disciplining, and  
2           in any way penalizing the parent-employee on account of the proceeding  
3           to collect child support, on account of any order or orders entered by  
4           the court in such proceeding, and on account of employer compliance  
5           with such order or orders; and

6           (6) To notify in writing the clerk of the court entering  
7           such order of the termination of the employment of such  
8           parent-employee, the last-known address of the parent-employee, and  
9           the name and address of the parent-employee's new employer, if known,  
10          and to provide such written notification within thirty days after the  
11          termination of employment.

12          Sec. 2. Section 43-1718.02, Reissue Revised Statutes of  
13          Nebraska, is amended to read:

14          43-1718.02. (1) In any case in which services are not  
15          provided under Title IV-D of the federal Social Security Act, as  
16          amended, and a support order has been issued or modified on or after  
17          July 1, 1994, the obligor's income shall be subject to income  
18          withholding regardless of whether or not payments pursuant to such  
19          order are in arrears, and the court shall require such income  
20          withholding in its order unless:

21                 (a) One of the parties demonstrates and the court finds that  
22                 there is good cause not to require immediate income withholding; or

23                 (b) A written agreement between the parties providing an  
24                 alternative arrangement is incorporated into the support order.

25          (2) If the court pursuant to subsection (1) of this section  
26          orders income withholding regardless of whether or not payments are in  
27          arrears, the obligor shall prepare a notice to withhold income. The

1 notice to withhold income shall be substantially similar to a  
2 prototype prepared by the Department of Health and Human Services and  
3 made available by the department to the State Court Administrator and  
4 the clerks of the district courts. The notice to withhold shall  
5 direct:

6 (a) That the employer or other payor shall withhold from the  
7 obligor's disposable income the amount stated in the notice to  
8 withhold for the purpose of satisfying the obligor's ongoing  
9 obligation for support payments as they become due and if there are  
10 arrearages, reducing such arrearages in child, spousal, or medical  
11 support payments arising from the obligor's failure to fully comply  
12 with a support order;

13 (b) That the employer or other payor shall pay to the  
14 obligor, on his or her regularly scheduled payday, such income then  
15 due which is not required to be withheld as stated on the notice or  
16 pursuant to any court order;

17 (c) That the employer or other payor shall not withhold more  
18 than the maximum amount permitted to be withheld under section 303(b)  
19 of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A)  
20 and (B), and the amount withheld to satisfy an arrearage of child,  
21 spousal, or medical support when added to the amount withheld to pay  
22 current support and the fee provided for in subdivision (2)(d) of this  
23 section shall not exceed such maximum amount;

24 (d) That the employer or other payor may assess an  
25 additional administrative fee from the obligor's disposable income not  
26 to exceed ~~two dollars and fifty cents~~ ten dollars in any calendar  
27 month as compensation for the employer's or other payor's reasonable

1 cost incurred in complying with the notice;

2 (e) That the employer or other payor shall remit, within  
3 seven days after the date the obligor is paid and in the manner  
4 specified in the notice, the income withheld, less the deduction  
5 allowed as an administrative fee by subdivision (2)(d) of this  
6 section, to the State Disbursement Unit and shall notify the unit of  
7 the date such income was withheld;

8 (f) That the notice to withhold income shall terminate with  
9 respect to the employer or other payor without any court action or  
10 action by the obligor thirty days after the obligor ceases employment  
11 with or is no longer entitled to income from such employer or other  
12 payor;

13 (g) That the employer or other payor may combine amounts  
14 required to be withheld from the income of two or more obligors in a  
15 single payment to the unit if the portion of the single payment which  
16 is attributable to each individual obligor is separately identified;

17 (h) That an employer or other payor who fails to withhold  
18 and remit income of an obligor after receiving proper notice or who  
19 discriminates, demotes, disciplines, or terminates an employee or  
20 payee after receiving a notice to withhold income shall be subject to  
21 the penalties prescribed in subsections (4) and (5) of this section;  
22 and

23 (i) That if the employer or other payor receives more than  
24 one notice to withhold income of a single obligor and the amount of  
25 income available to be withheld pursuant to the limits specified in  
26 subdivision (c) of this subsection is insufficient to satisfy the  
27 total support amount certified in the notices, the income available

1 shall first be applied to current support. If the total amount of  
2 income available to be withheld is insufficient to satisfy the total  
3 amount of current support certified by the notices, the employer or  
4 other payor shall withhold for each notice the proportion that the  
5 amount of the current support certified in such notice bears to the  
6 total amount of current support certified in all notices received for  
7 the obligor. Any remaining income available to be withheld after  
8 current support is satisfied for all notices shall be applied to  
9 arrearages. If arrearages are certified in more than one notice, the  
10 employer or other payor shall withhold for each notice the proportion  
11 that the amount of the arrearage certified in such notice bears to the  
12 total amount of arrearage certified in all notices received for the  
13 obligor.

14 Compliance with the order by the employer or other payor  
15 shall operate as a discharge of the employer's or other payor's  
16 liability to the obligor as to the portion of the obligor's income  
17 withheld.

18 (3) The obligor shall deliver the notice to withhold income  
19 to his or her current employer or other payor and provide a copy of  
20 such notice to the clerk of the district court.

21 (4) Any employer or other payor who fails to withhold and  
22 remit any income of an obligor receiving income from the employer or  
23 other payor, after proper notice as provided in subsection (2) of this  
24 section, shall be required to pay to the unit the amount specified in  
25 the notice.

26 (5) An employer or other payor shall not use an order or  
27 notice to withhold income or order or the possibility of income

1 withholding as a basis for (a) discrimination in hiring, (b) demotion  
2 of an employee or payee, (c) disciplinary action against an employee  
3 or payee, or (d) termination of an employee or payee.

4 Upon application by the obligor and after a hearing on the  
5 matter, the court may impose a civil fine of up to five hundred  
6 dollars for each violation of this subsection.

7 An employer or other payor who violates this subsection  
8 shall be required to make full restitution to the aggrieved employee  
9 or payee, including reinstatement and backpay.

10 (6) When an obligor ceases employment with or is no longer  
11 entitled to income from an employer or other payor, the notice to  
12 withhold income shall not cease to operate against the obligor and  
13 income withholding shall continue to apply to any subsequent  
14 employment or income of the obligor. The notice to withhold income  
15 shall terminate with respect to the employer or other payor without  
16 any court action or action by the obligor thirty days after the  
17 obligor ceases employment with or is no longer entitled to income from  
18 such employer or other payor. A notice to withhold income shall also  
19 terminate when the child, spousal, or medical support obligation  
20 terminates and all past-due support has been paid, in which case the  
21 obligor shall notify the employer or other payor to cease withholding  
22 income.

23 (7) A notice to withhold income may be modified or revoked  
24 by a court of competent jurisdiction as a result of modification of  
25 the support order. A notice to withhold income may also be modified or  
26 revoked by a court of competent jurisdiction, for other good cause  
27 shown, after notice and a hearing on the issue.

1           (8) The obligee or obligor may file an action in district  
2 court to enforce this section.

3           (9) If after an order is issued in any case under this  
4 section the case becomes one in which services are provided under  
5 Title IV-D of the federal Social Security Act, as amended, the county  
6 attorney or authorized attorney or the Director of Health and Human  
7 Services shall implement income withholding as otherwise provided in  
8 the Income Withholding for Child Support Act.

9           Sec. 3. Section 43-1723, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           43-1723. Except as otherwise provided in this section, the  
12 county attorney, the authorized attorney, or the department shall  
13 notify the obligor's employer or other payor, by first-class mail or  
14 by electronic means, within the time determined by the department  
15 which shall comply with the requirements of Title IV-D of the federal  
16 Social Security Act, as amended. The notice shall specify the basis  
17 for the assignment of income and shall direct:

18           (1) That the employer or other payor shall withhold from the  
19 obligor's disposable income the amount certified by the county  
20 attorney, the authorized attorney, or the department for the purpose  
21 of reducing and satisfying the obligor's (a) previous arrearage in  
22 child, spousal, or medical support payments arising from the obligor's  
23 failure to fully comply with a support order previously entered and  
24 (b) ongoing obligation for support payments as they become due;

25           (2) That the employer or other payor shall implement income  
26 withholding no later than the first pay period that begins following  
27 the date on the notice;

1           (3) That the employer or other payor shall pay to the  
2 obligor, on his or her regularly scheduled payday, such income then  
3 due which is not certified to be withheld pursuant to section 43-1722  
4 or any court order;

5           (4) That the employer or other payor may assess an  
6 additional administrative fee from the obligor's disposable income not  
7 to exceed ~~two dollars and fifty cents~~ ten dollars in any calendar  
8 month as compensation for the employer's or other payor's reasonable  
9 cost incurred in complying with the notice;

10          (5) That the employer or other payor shall remit, within  
11 seven days after the date the obligor is paid and in the manner  
12 specified in the notice, the income withheld, less the deduction  
13 allowed as an administrative expense by subdivision (4) of this  
14 section, to the State Disbursement Unit as designated in the notice  
15 and shall notify the unit of the date such income was withheld;

16          (6) That the employer or other payor shall notify the county  
17 attorney, the authorized attorney, or the department in writing of the  
18 termination of the employment or income of the obligor, the last-known  
19 address of the obligor, and the name and address of the obligor's new  
20 employer or other payor, if known, and shall provide such written  
21 notification within thirty days after the termination of employment or  
22 income;

23          (7) That income withholding is binding on the employer or  
24 other payor until further notice by the county attorney, the  
25 authorized attorney, or the department;

26          (8) That the employer or other payor may combine amounts  
27 required to be withheld from the income of two or more obligors in a

1 single payment to the unit as designated in an income withholding  
2 notice if the portion of the single payment which is attributable to  
3 each individual obligor is separately identified;

4 (9) That an employer or other payor who fails to withhold  
5 and remit income of an obligor after receiving proper notice or who  
6 discriminates, demotes, disciplines, or terminates an employee or  
7 payee after receiving an income withholding notice shall be subject to  
8 the penalties prescribed in sections 43-1724 and 43-1725; and

9 (10) That if the employer or other payor receives more than  
10 one notice to withhold income of a single obligor and the amount of  
11 income available to be withheld pursuant to the limits specified in  
12 section 43-1722 is insufficient to satisfy the total support amount  
13 certified in the notices, the income available shall first be applied  
14 to current support. If the total amount of income available to be  
15 withheld is insufficient to satisfy the total amount of current  
16 support certified by the notices, the employer or other payor shall  
17 withhold for each notice the proportion that the amount of the current  
18 support certified in such notice bears to the total amount of current  
19 support certified in all notices received for the obligor. Any  
20 remaining income available to be withheld after current support is  
21 satisfied for all notices shall be applied to arrearages. If  
22 arrearages are certified in more than one notice, the employer or  
23 other payor shall withhold for each notice the proportion that the  
24 amount of the arrearage certified in such notice bears to the total  
25 amount of arrearage certified in all notices received for the obligor.

26 Compliance with the order by the employer or other payor  
27 shall operate as a discharge of the employer's or other payor's

1 liability to the obligor as to the portion of the obligor's income  
2 withheld. The county attorney, the authorized attorney, or the  
3 department need not notify the Commissioner of Labor as a payor if the  
4 commissioner is withholding for child support from the obligor under  
5 section 48-647 for the same support order.

6 Sec. 4 Original sections 42-364.01, 43-1718.02, and 43-1723,  
7 Reissue Revised Statutes of Nebraska, are repealed.